

BOARD OF FORESTRY AND FIRE PROTECTION

P.O. Box 944246
SACRAMENTO, CA 94244-2460
(916) 653-8007
(916) 653-0989 FAX
Website: www.bof.fire.ca.gov



BOARD OF FORESTRY AND FIRE PROTECTION April 12 and 13, 2005 Sacramento, California

BOARD OF FORESTRY MEMBERS PRESENT:

Stan Dixon, Chairman
Kirk Marckwald, Vice Chair
Mark Bosetti
Gary Ryneerson
Nancy Drinkard

BOARD MEMBER ABSENT:

David Nawi

BOARD STAFF:

George Gentry, Executive Officer
Eric Huff, Executive Officer, Foresters Licensing
Chris Zimny, Regulations Coordinator
Mark Hite, Committee Staff
Laura Estrada, Executive Assistant

DEPARTMENTAL STAFF:

Dennis Hall, Chief, THP Administration, Forestry and Fire Protection
Duane Shintaku, Assistant Deputy Director, Forest Practice,
Forestry and Fire Protection
Jim Wilson, Foresters, Resource Management, Forestry and Fire
Protection
Giny Chandler, Chief Counsel, Department of Forestry and Fire
Protection

CALL TO ORDER

Chairman Dixon called the April 2005 meeting of the Board of Forestry and Fire Protection to order.

REPORT OF EXECUTIVE SESSION

Chairman Dixon reported that the Board did not meet for Executive Session yesterday afternoon.

APPROVAL OF MINUTES

Chairman Dixon asked for Board approval of the March 2005 minutes.

05-4-3-Member Ryneerson moved to approve the March Minutes. Member Drinkard seconded the motion, and all were in favor.

CONSENT CALENDAR

Nothing to report for this month.

FOREST PRACTICE COMMITTEE

Member Rynearson met yesterday with the Committee and went over three items of business. The first item was modifications in the Lake Tahoe exemption that the Board heard from two local representatives from the Lake Tahoe area. One was representing the Lake Tahoe Conservancy and the other was the Lahontan Water Board, Tom Suk, Lahontan Regional Water Quality Control Board, RWQCB went over proposed changes to the Lake Tahoe exemption, which would allow green tree harvesting within the watercourse wind protection zones within the Lake Tahoe Region.

The second item of discussion was regarding the La Malfa proposed regulations. These regulations were a result of the chaptering of the LaMalfa Bill. There are currently two action items out of LaMalfa. One of the action items that was brought up to the Board was a proposed 45-day rule package that the Committee had recommended through unanimous vote to move forward. The second action item was to extend the emergency regulation to another 120-days. Additionally, that too was a unanimous vote. The third item was to forward the LaMalfa permanent regulation out for a 45-day notice.

Chairman Dixon asked Board members if they had any comments.

Member Rynearson said that LaMalfa is probably ready to move at this time without any further discussion. There will be some additional discussion required on the Lake Tahoe exemption. Unfortunately Mr. Tom Suk was not able to attend the Board meeting today, due to Jury selection. He had some concerns regarding some changes that the Committee made after he left yesterday. The Board can decide as to whether they want to move forward with the language as the Board prepared or consider Mr. Suk's recommended changes.

Member Bosetti supports extending emergency on La Malfa and felt that the notice was appropriate.

Member Ryneason made a motion to create a new 120-day emergency on La Malfa and member Bosetti seconded the motion.

The Chairman called for a roll call vote:

Bosetti	Aye
Drinkard	Aye
Markckwald	Aye
Rynearson	Aye
Dixon	Aye

Motion passed by a unanimous vote.

Member Rynearson offered a second motion to recommend that staff prepare and distribute to the appropriate channels a 45-day notice for permanent regulations implementing the LaMalfa statute. Member Bosetti seconded the motion.

The Chairman called for a roll call vote:

Drinkard	Aye	Bosetti	Aye
Marckwald	Aye	Dixon	Aye
Rynearson	Aye		

Motion passed by a unanimous vote.

Mr. Zimny, Regulations Coordinator, distributed to all Board members the most recent La Malfa regulation that was adopted and amended yesterday in Committee. This was the 45-day notice for permanent rule recommended to full Board on April 12, 2005 and re-noticing to full Board for recommendation for the emergency rule. Additionally, Mr. Zimny distributed the revised language that was recommended by the Board for the Lake Tahoe Region Exemption that was approved yesterday in Committee. Mr. Zimny also gave Board members a copy of an email from Mr. Tom Suk addressed to Mr. Zimny regarding some concerns he had about the Tahoe exemption that the Board recommended for the emergency rule. The fundamental issue is that from his perspective he raised two key concerns to the Board. One was that he wanted to have green tree thinning in streamside zones and WLPZ's in Lake Tahoe as an exemption as an emergency rule to help facilitate fuel hazard reduction this summer in Lake Tahoe. The Committee has accomplished that by amending the regulation in this proposed Tahoe exemption under 1038F.

The second fundamental element that Mr. Suk requested to attempt to harmonize all exemptions that are operated in Lake Tahoe to reflect the Lake Tahoe exemption requirements as listed under "F" 1038 1-14. When the final rule language was adopted late yesterday for the Lake Tahoe exemption under the item of 1038F, the Committee decided to strike out the language that had "all timber operations conducted under the Lake Tahoe exemption shall have the limits established under 1038", 1-14. The Committee decided to eliminate that language. Mr. Suk requested that the language be added back. Mr. Suk said that he recognizes that this is an emergency rule and that the issue of adding items 1-14 for all exemptions is a separate issue from the WLPZ thinning and is prepared to accept and continue to work with the Board if they chose to go through with what the Committee adopted yesterday.

Vice Chair Marckwald expressed concerns on adding that line back in and wondered if it might slow down the use of exemptions or activities around thinning. Additionally, he asked how the Board would fulfill Mr. Suk's request and the Board's concern on this issue.

Mr. Zimny said that adding 1-14 to every section will add additional restrictions to every exemption that is filed in Lake Tahoe in terms of complying with land classifications, logging requirements, WLPZ's Classifications and additional approvals and reviews by the Water Board. However, Mr. Zimny said there are some benefits.

Member Ryneanson went over green tree thinning within those zones. Additionally, he said that he preferred that this line item not be added at this time. The Committee does not have the information to make those modifications. Member Ryneanson said that when the Board decides to make changes on that line item and if the regulation is passed and 1-14 is modified, to allow green tree harvesting within the SZZ and WLPZ, that the findings should indicate that the Board is cognizant of the fact that this will also effect 1038I in that 1052.4 list specifically items 1-14 for operations that are conducted within the Lake Tahoe Region.

Vice Chair Marckwald had a question on page seven, line five regarding addition of the word "significant" on timber operations.

Mr. Zimny said that he would follow-up on that line item.

Member Ryneanson added that in reference to line item 1-14, applicants still has to abide by the waiver requirements for the Lahoton Board of the Lake Tahoe Basin and have to obtain and adhere to all requirements of the tree removal permit. Any requirements that the Lahoton Board has that is beyond the Board's regulations are implemented both through a waiver process and through tree removal that has to be followed.

PUBLIC COMMENT

No comments.

Member Ryneanson moved to adopted the proposed emergency regulations for the Lake Tahoe Region exemption. Member Drinkard seconded the motion.

The Chairman called for a roll call vote:

Markckwald	Aye
Ryneanson	Aye
Bosetti	Aye
Drinkard	Aye
Dixon	Aye

Motion passed by a unanimous vote.

Member Ryneanson went over the Road Management Plan. Additionally, he discussed the master environment assessment approach that is being used regarding the CEQUA process.

Member Ryneanson also went over the CLFA proposed changes

The Committee went over the Performance Based rules on slash treatments.

POLICY MANAGEMENT COMMITTEE

Vice Chair Marckwald went over the first item that was covered in Committee regarding activities on various management items with the Department.

The Committee had suggested changes to the Fish and Game Commission and Boards policy on Hardwoods. The Committee recommended to the Chairman to send a packet to the Planning Directors on calling there attention to the passage of the Legislation #1334 and calling their attention to how various counties such as El Dorado, Tehama have responded to the mandate of this Legislation as well as a copy of the Legislation that Bill Stewart has done on Hardwoods in an effort to ensure that they know what tools are available.

Vice Chair Marckwald went over the Joint meeting with the Commission and how in years past the meeting has not been as productive as it might have been. The Executive Officer will be working with Mr. Treanor, Fish and Game Commission, to work on hardwood and COHO and items on Legislative proposals and performance-based rules.

Vice Chair Marckwald gave a brief update from Bill Stewart on the Board's Policy Statement.

New and unfinished business: Richard Geinger and Dennis Hall gave a brief update on the Buckeye conservancy approach which was done on cumulative effects and went over ways to make progress.

Mr. George Gentry reported that he has had discussions with Mr. Treanor, Executive Officer and particularly the issue of COHO was one that Mr. Gentry had placed a fair amount of importance in that area. Mr. Gentry has requested that he make a request to the Department of Fish and Game to have a presentation for our Joint meeting regarding the COHO issue.

REPORT OF THE DEPARTMENT ON CIVIL PENALTIES

Ms. Giny Chandler, Chief Counsel, Department Of Forestry, reported that the Department would like the Board to consider three things. The first is a packet of the decisions that they would like the Board to consider. She indicated that the Administrative Procedures does provide what the Board can designate as the decisions that are the Board's final decision as precedent.

Ms. Chandler said that the reason the Department is asking the Board to consider this is because the Department has had some difficulty with the Administrative Law Judges in pursuing those civil penalties and getting consistent decisions. The Department would like the Board to have ALJ's have a body of law to discuss the factors that go into making both the decision of whether a violation has occurred and those packets which apply when the Department asks for penalties. Ms. Chandler reported that there is a method when applying the factors to the penalties. What they have seen is that DOJ does not always apply those factors in a consistent fashion. She indicated that at times they stipulate the violations and ignore the factors that are in the rules, which are typical with the Department.

The Department has provided the Board with three decisions, which are all final decisions of the Board. Two of them they would ask the Board to adopt in total. The APA? Provides that the Board has three options in adopting a precedential decision. You can designate everything that you have ever decided as precedential, you can designate the whole of a case as precedential or you can designate part of a case. In this case, Ms. Chandler was asking the Board to designate two whole decisions and in one particular decision, which is the Hale decision, the Department is asking that the Board designate all but one paragraph. Ms. Chandler went over the specifics on that case and why she was asking the Board to designate all but that one paragraph.

The first action that Ms. Chandler requested was to designate the three decisions as precedential and omitting the one paragraph on the Hale decision (page 5, paragraph 3, lines 15-20). The second request is that the Board considers hearing some of these cases from the beginning, instead of having them referred out to a law judge. She indicated that the reasons for the request is it is allowed under the rules and the Board is more familiar in that area than most ALJ's are in regards to the act and the rules. Additionally, she indicated that she would like to send a message to the ALJ's that the Department is paying a lot of money for their services. Ms. Chandler said she is representing these cases as the Department's attorney and not the Board's attorney. She asked the Board to consider the cost issue and the consistency issue.

Ms. Chandler said that the Board could hear these decisions as full Board or the Board can appoint a Committee to hear the decision. The process would be that the Committee would make recommendations to the full Board. In addition, there should be counsel present for guidance of procedures.

The third request was to have authorization from the Board to go to the presiding judge in Oakland, which is the judicial district where there seems to be inconsistencies on decisions. Additionally, she requested that the Executive Officer of the Board go with counsel, so that the Board is represented as well as the Department.

Chairman Dixon indicated that the Board would be able to accommodate two of those request, but the third would be difficult because of the absence of Board members.

Ms. Chandler indicated that these cases are costing the Department about 1500.00 a day on transcript cost.

Member Bosetti said that he has never seen the cost factor.

Mr. Jim Wilson, Forester, Resource Management, Department of Forestry, said that the Board does get a bill, but it is hard to tie invoice to a particular case.

Member Bosetti asked the Boards counsel regarding some of the decisions in the package that were given to the Board members on actions that have been before the Board and members of the Board who may or may not have recused themselves from participation. He further asked if there were any bearing on adopting a precedential decision or finding on a decision that a person from the Board had recused themselves on the original past decision.

Mr. Reeves, Deputy Attorney General Counsel for the Board, responded that the policy implications of designating a decision as presidential could be such that the considerations underlying the recusal are just as applicable to that members consideration that they make the decision precedential as they are to making the decision first instance.

Member Bosetti indicated that there are decisions in this packet that are being asked for precedential approval by the Board on those particular findings and indicated that he would not be able to make a decision at this time, therefore recused himself.

Mr. Jim Wilson asked Member Bosetti if it was the Simonis case that he was recusing himself from.

Member Bosetti responded yes.

Ms. Chandler said that there are only three cases that the Department is asking the Board to consider. She asked for the Board to consider these cases individually, if that would facilitate getting a couple of them designated as precedential, because they have more cases coming up and she would like to go to ALJ with at least some cases are precedent by the Board.

Chairman Dixon indicated that that Board does not have a problem handling these cases individually.

Member Bosetti indicated that he would have to recuse himself from the Cockshot decision.

There was further discussion.

05-4-7-Vice Chair Marckwald moved to authorize the Department in association with the Executive Officer to meet with the presiding law judge in the Oakland Office of Administrative Hearings to try to get a better understanding on the kinds of decision and facts and how their decisions apply outside of what other regions do. Member Drinkard seconded the motion and all were in favor.

There was no finalized discussion on item "C". The Board will continue to discuss this matter. The Board asked the Department and counsel if they see a case that is of particular interest to inform the Board and they would take that for consideration.

05-4-7-Vice Chair Marckwald made a motion on item A regarding the civil penalties case to be designated as precedential on Simonis (CP02-06) and Cockshot (CP01-01) in their entirety. Member Ryneearson seconded the motion. Four were in favor. There was one abstention. Motion was passed.

05-4-7-Vice Chair Marckwald made a motion to adopt the decision as precedential on the Civil Penalty case on Hale, (CP 01-08), with the exception of page five, lines 15-19, starting with the sentence "The definition" and ending with "occurred". Member Ryneearson seconded the motion and all were in favor.

RPF LICENSING

Mr. Eric Huff, Executive Officer in Licensing, reported that the following Registered Professional Forester (RPF) has requested and meets the requirements for license withdrawal. Mr. Huff requested the Board grant withdrawal status of Mr. Mark F. Bevan, RPF No. 767.

05-4-4 – Member Ryneearson made a motion to approve the requested RPF withdrawal. Member Bosetti seconded the motion and all were in favor.

Mr. Huff also announced that Mr. Bernie Bush is pending retirement and will also be requesting to withdrawal his RPF status. The Board deferred this action till next month's Board meeting.

REPORT OF THE CHAIRMAN

Chairman Dixon reported that the Forest Practice Committee and the Watershed and Road Management Committee will be combined.

Chairman Dixon announced that Mr. Daniel Sendek, Civil Litigation Coordinator, Resource Management, Forestry and Fire Protection, should be acknowledged for ranking on the top of his class in the Fire Academy.

Chairman Dixon also acknowledged the upcoming retirement of Bernie Bush. The Chairman wished him much luck in his retirement.

Member Bosetti said that he enjoyed his company, humor and professionalism.

Member Rynearson wished Mr. Bush luck and also announced that he has accepted a new position and will be working for Green Diamond.

REPORT OF THE DIRECTOR

Mr. George Gentry, Executive Officer, announced that the Director sends his regards, but had another commitment with the Senate Budget Committee. In addition, Mr. Mike Jarvis, Deputy Director of Communications, Directors Office, was sworn in on Monday.

Mr. Gentry also announced that the Mr. Mark Stanley was appointed Chief Deputy Director, Directors Office, with the Department and will be responsible for Resource Management, Legislation and Communications.

REPORT OF THE CALIFORNIA OAK MORTALITY TASK FORCE (COMTF)

Ms. Katie Palmieri, went over the Oak Mortality report, which was included in the Board Binder in tab eight.

Additionally, she announced that they had a half day training session on April 5, 2005, on P. ramorum diagnosis and management.

On May 24, 2005, COMTF, will be having a training session on P. ramorum diagnosis and management. This will take place at City Team Camp May-Mac, Felton, from 9:00 a.m. to 3:00 p.m.

REPORT OF FEDERAL AGENCIES: INCLUDING USDA FOREST SERVICE, NATIONAL MARINE FISHERIES SERVICE, US FISH & WILDLIFE SERVICE, AND US ENVIRONMENTAL PROTECTION AGENCY

Mr. Mike Chapel, U.S. Forest Practice announced that the Fire Staff would be having a regional meeting this week. He reported that their funding level is the same as last year. They will be providing the same fire fighting force as last year, and indicated that staff will probably be sent out of state quite a bit due to the fact that Oregon and Washington are extremely dry. Mr. Chapel, distributed handouts to the Board members.

Mr. Chapel went over decisions on the Sierra's. News release – 90-day review on guidelines. Direct how they do planning in the Natural Sierra's. The region now has a webpage and calendar available.

Mr. Chapel went over the forest Service centennial Film entitled, "The Greatest Good".

Mr. Chapel announced that three books will be published May-June, 2005, and will be available in July to celebrate the Forest Service Centennial in the Pacific Southwest Region. The books are titled, "Fire in the Forest", "Caring for the Land" and "Once Upon a Time".

The Forest Service Centennial will be held October 15, 2005 at the Motherlode Fairgrounds, Sonora, CA.

REPORT OF STATE AGENCIES; INCLUDING STATE WATER QUALITY CONTROL BOARD, DEPARTMENT OF FISH AND GAME, GEOLOGIC SURVEY

Nothing to report.

DISCUSSION REGARDING THE DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR) AND MANAGEMENT PLAN FOR JACKSON DEMONSTRATION STATE FOREST (JDSF)

Mr. Gentry reported that the Department is working extensively on the last few sections of the Administrative Draft and near completion.

Mr. Russ Henley, Assistant Deputy Director, Resource Management, Department of Forestry and Fire Protection, reported that with the exception of two sections, it is almost complete. He is currently working on timber and cumulative effects. Additionally, he is moving forward in getting those parts completed. Will find time on completed parts in getting feedback.

Mr. Gentry announced that from May through September, the Board has various trips planned. It is Mr. Gentry's intent to schedule potential stand alone dates for the Board to meet to consider, for instance the approval of the ADEIR for distribution and any other special meetings as may be necessary to facilitate moving forward with the ADEIR.

DISCUSSION OF FOREST PRACTICE COMMITTEE RECOMMENDATIONS REGARDING LARGE, OLD, OR HERITAGE TREES

Deferred to May's Board meeting.

REPORT OF THE BOARD'S ADVISORY COMMITTEES

FOREST PEST COUNCIL

Mr. Scott Johnson welcomed Member Drinkard to the Board.

Mr. Johnson announced that the Pest Council had their 53rd Annual Meeting Online Proceedings on November 9-10, 2004. In that meeting they went over Forest Insect and pathogen Research and Management. This was posted to the website.

There will be a joint tour in the Weed Committee on July 20 and 21, 2005.

Mr. Johnson congratulated Bernie Bush on his retirement.

RANGE MANAGEMENT ADVISORY COMMITTEE

Mr. Gentry reported that RMAC is currently working on the Department's VMP. The VMP Committee will be meeting next week to work in this area. Additionally, RMAC's next meeting will be April 19 and 20, 2005, in the large conference room on the 15th floor.

MONITORING STUDY GROUP (MSG)

Mr. Clay Brandow, Watershed Specialist, Resource Management, Forestry and Fire Protection, went over the MSG agenda report. Handouts were distributed to all Board members.

Mr. Brandow reported that MSG met on April 7, 2005 at the Mendocino County Museum in Willits. Eric Huff, Executive Officer for the Foresters Licensing Program, chaired the meeting.

The next MSG meeting will be scheduled in July at the Mendocino County Museum in Willits. The agenda will be emailed out and sent to the BOF's mailing list.

PROFESSIONAL FORESTERS EXAMINING COMMITTEE (PFEC)

Mr. Doug Ferrier announced that the PFEC Committee had their meeting in Humboldt. Next Friday will be the RPF's Exam. Forty people will be taking this exam. PFEC has 5 open disciplinary files being re-opened.

Mr. Ferrier reported that the Faculty at Humboldt State is low. He went over this matter. People attending thought that they were going to get a degree in this area are getting short changed because there is not enough faculty. If the department were fully staffed, the academic levels would be up. He indicated that it was a good meeting. Mr. Huff basically wanted to inform the Board on the status at Humboldt State. Mr. Ferrier indicated that he would like the Forestry program to continue.

Chairman Dixon indicated that PFEC and the Board would work to assist the effort.

Mr. Eric Huff had positive comments from students in the community colleges and need for PFEC's.

Mr. Huff announced that Mr. Buel Hunt recently passed away. He was a Licensed Forester with the U.S. Forest Service.

Mr. Huff extended his condolences to Member Rynearson in the passing of his father.

REPORT OF THE SENSITIVE WATERSHEDS NOMINATIONS REVIEW COMMITTEE (SWNRC)

Mr. George Gentry reported that the Committee would be having a meeting on May 10, 2005 in Eureka at the First American Title Company.

RESOURCE PROTECTION COMMITTEE

Member Bosetti, Chairman of the RPC, went over two items that were discussed in Committee. He went over Budget Hearings that were held by Mr. Jim Wright, Deputy Director, Fire Protection. The Committee also had a discussion regarding Community Wildland Fire Protection Plan. They will be sending out a revision.

The Committee spent two hours discussing SB1369, Legislation that is currently law.

On New and Unfinished Business, the Committee is currently working on the Fire Plan and DVDB issues. May have resolution on this and submittal of letter to Senate Rules Committee.

REPORT OF THE REGULATIONS COORDINATOR

Mr. Chris Zimny, Regulations Coordinator, reported that there would be no regulations hearing in May 2005. Additionally, the Transition Silviculture Rule will be recommended in June 2005.

REPORT OF THE EXECUTIVE OFFICER

Mr. George Gentry, Executive Officer for the Board, reported that the Board's Joint meeting with Fish and Game would be May 4, 5, and 6. Tuesday will be shortened Committee meetings in the morning and the Board meeting will be held in the afternoon. Wednesday will be the field trip to Soper-Wheeler. Thursday in the a.m. will be the Joint Fish and Game meeting. Items of discussion will be COHO, Hardwood Policy, and implementation of Fuel Hazard.

PUBLIC FORUM

Mr. Richard Geinger, extended his condolences on the passing of Member Ryneanson's Father

Mr. Geinger said that Terry Rolof's wife is out of a comma and is making strong progress. Tracey Filliard had lower back surgery and indicated that the surgery was successful.

The Salmonic Restoration Federation had a good conference a week ago and they had some good fieldtrips. Leslie Reed was one of the presenters in this conference and she did a speech on monitoring, which was in reference to restoration projects.

SRF Instituted two new awards one was a Lifetime Achievement Award and they awarded two people on that award one was presented to Terri Rolof, which was Lifetime Achievement and the other individual was Terry Stenle. The Golden Pipe Award was given to Ross Taylor.

Mr. Geinger asked that the Board help consolidate efforts to Cumulative Effects.

Mr. Dan Weldon, Forest Landowners of California, (FLOC) announced that their annual meeting would be held the end of April 2005 in Gualala. Mr. Weldon extended an invitation to all Board members.

NEW AND UNFINISHED BUSINESS

Mr. George Gentry announced that the Department will be having their 100th Anniversary Monday, May 9th, 2005 at 10:00 a.m. on the West Steps of the State Capitol.

ADJOURNMENT

The Chairman adjourned the April 2005 meeting of the Board.

Respectfully submitted,

ATTEST:

George D. Gentry
Executive Officer

Stan Dixon
Chairman

Copies of the attendance sheets can be obtained from the Board Office.